THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.8471 of 2007

.4.2007

Between:

M/s.Daggubati Farms and Estates, represented by
Sri D.Suresh Babu, Director and others

… Petitioners

AND

The Chief Commissioner of Land Administration,
Government of Andhra Pradesh, Abids, Hyderabad
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.8471 of 2007

ORDER:

This writ petition is filed seeking a writ of Certiorari to quash notice dated 01.6.2006 issued by the second respondent under section 166-B of Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli (hereafter referred to as, LR Act). Petitioners also seek a consequential direction to the District Collector, Ranga Reddy District, to issue No Objection Certificate (NOC) in respect of the land comprised in survey Nos.4, 5, 8, 9, 10 and 41/9 to 41/12 admeasuring Acs.26.16 gts situated at Khanamet village of Serilingampally Mandal ain Ranga Reddy District (hereafter called, subject land).

The short relevant fact of the matter shorn of the details is as follows. Petitioners purchased subject land under different sale deeds from one K.Kousalya and others. They allege that subject land was originally assigned to ex-servicemen under Rule 9(g) of Laoni Rules in April 1961 and as per the orders of the Government in G.O.Ms.No.743, dated 30.4.1963 read with G.O.Ms.No.1117, dated 11.11.1993, condition of inalienability is not attached to the lands assigned to ex-servicemen. On 25.5.1994, the Department of Survey and Land Records issued supplementary Sethwar in favour of the assignees and when petitioners purchased the property, the Government allegedly consented for the transfer without any demour. Subsequently mutation was also effected in favour of petitioners. When the petitioners approached the Joint Collector – third respondent herein; for obtaining NOC to get the layout approved by Hyderabad Urban Development Authority (HUDA), third respondent addressed a letter dated 18.1.2005 to first respondent for permission under Section 166-B(3) of LR Act for cancellation of Sethwar. First respondent vide letter dated 02.2.2006 while declining such permission sought for opinion as to whether *suo*

motu revision under Section 166-B can be taken. In response thereto, third respondent sent a letter on 17.4.2006 requesting permission to cancel Sethwar. In furtherance thereto, first respondent issued the impugned notice. In January 2007, second respondent heard the matter finally and orders are awaited. Even while the orders of second respondent are awaited, petitioners chose to file the instant writ petition.

Learned Senior Counsel for petitioners, Sri P.P.Rao, submits that the impugned notice issued by second respondent is wholly without jurisdiction and, therefore, even if the petitioners appeared before the authority and submitted their case, the same would not bar the present writ petition. Secondly he submits that the conditions precedent for exercising jurisdiction under Section 166-B of LR Act were followed more in breach and second respondent issued the impugned notice even without calling for the records and verifying the same. Placing reliance on the correspondence between respondents 1 and 3 especially the letters dated 18.1.2005, 02.2.2006 and 17.4.2006, learned Senior Counsel would urge that on mere suspicion of fraud, at the behest of third respondent, second respondent could not have validly invoked Section 166-B of LR Act. It is also contended that subject land was assigned to ex-servicemen in 1961 and the exercise of revisional jurisdiction after long lapse of more than forty years is arbitrary and illegal. Learned Senior Counsel does not dispute that against show cause notice, writ petition would not ordinarily lie and all questions of jurisdiction, in usual course, would have to be raised before the authority. The proposition that when power to revise an order is not subject to limitation, in the event of fraud and misrepresentation, such power can be exercised at any time is also not seriously disputed.

Learned Assistant Government Pleader for Revenue (Assignment), after getting instructions, submits that the matter was already heard finally and the order could not be passed by the second respondent, as the incumbent officer was transferred. He also submits that as the petitioners already submitted reply, the matter would be disposed of in due course of time if necessary after conducting a rehearing by the officer or by first respondent himself.

The only point that falls for consideration is, whether in the facts and circumstances, this writ petition is maintainable.

It is axiomatic that the purpose of issuing a show cause notice is to afford an opportunity to the person against whom there might be an adverse order. Therefore, a show cause notice as such is not a decision amenable to judicial review nor a decision to issue show cause notice can be challenged in a writ petition. It is well settled that

when a show cause notice is impeached, the Court of judicial review should be slow and loath to intervene at that stage for such party has opportunity to plead questions of jurisdiction and questions of facts and law before the same authority. Entertaining writ petition against show cause notice, as a matter of course, is not approved by the Supreme Court. Even if, "the show cause notice was totally non-est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, the writ should not be entertained … … … and whether the show cause notice was founded on any legal premises, is a jurisdictional issue, which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially … …" (see **Special Director v Mohd. Ghulam Ghouse**[1] and **State of U.P. v Barhm Datt Sharma**[2].

In this case, learned Senior Counsel has urged two grounds to contend that the impugned notice is without jurisdiction. On these questions, if any opinion is expressed, it would certainly preclude petitioners as well as revisional authority from going into such questions. Therefore, it would not be proper for this Court to go do so. The submission made by learned Senior Counsel with reference to three letters exchanged between respondents 1 and 3, is left open. The question whether the original assignees played fraud in obtaining assignment is also a question, which has to be gone into by the revisional authority.

Petitioners have already submitted a detailed lengthy reply raising all objections. The question of limitation, question of jurisdiction, question of genuineness of the original grant in favour of ex-servicemen, question of illegality and question of property are all found in the reply affidavit. There cannot be any doubt that the revisional authority shall have to necessarily consider all questions and record finding on each of them.

For the above reasons, the writ petition cannot be accepted. This Court however observes that in the facts and circumstances of this case, second respondent should dispose of the matter expeditiously preferably within a period of four weeks from the date of receipt of a copy of this order. If for any reason an incumbent is not posted as Commissioner of Appeals – second respondent – first respondent may himself hear the matter and pass necessary orders keeping in view the observations made herein above regarding the questions raised. Such exercise may be completed within a period of four weeks from the date of receipt of a copy of this order. It is also observed that this Court has not expressed any opinion on the merits of the case and the revisional authority has to decide all the issues

independently.

The writ petition, subject to above observations, is accordingly disposed of. No costs.

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(**V.V.S.RAO, J**)

April , 2007.
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[1] (2004) 3 SCC 440

[2] AIR 1987 SC 943